IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

1) S.B. CIVIL WRIT PETITION NO.7877/2007

Tirath Das
Vs.
State of Raj. & Ors.

2) S.B. CIVIL WRIT PETITION NO.7927/2007

M/s.Kalumal Das Topas Das
Vs.
State of Raj. & Ors.

3) S.B. CIVIL WRIT PETITION NO.7928/2007

M/s.Hukam Singh Nand Singh
Vs.
State of Raj. & Ors.

4) S.B. CIVIL WRIT PETITION NO.9391/2007

Puran Kumar
Vs.
State of Raj. & Ors.

5) S.B. CIVIL WRIT PETITION NO.8756/2007

Prem Chand
Vs.
State of Raj. & Ors.

Date of order : 12/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Sunil Samandaria for the petitioners.
Shri Inderjeet Singh for the respondents.

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BY THE COURT :-

These three writ petitions which are identical in nature are being disposed of by this common judgment. Petitioners seek to challenge the similar orders passed in respect of each of them on 23/6/2005 whereby their licences issued in terms of Section 15 of the Rajasthan Agriculture Market Produce Act, 1961 and Rule 70 of the Rules framed thereunder were cancelled.

2) Shri Sunil Samandaria, learned counsel for the petitioners has aruged that the petitioners were issued permanent licence in the category of 'trader' under Rule 69 of the Rajasthan Agriculture Market Produce Rules, 1963. Their licences have been cancelled merely on the premise that they have failed to occupy the shop auctioned to them in the mandi premises even though they participated in the auction proceedings and gave highest bid in respect of the shop. The learned counsel argued that the impugned order dated 23/6/2005 has been passed pursuant to the direction issued by the Director, Agriculture Marketing Board, Government of Rajasthan dated

17/10/1996 which in turn has been issued pursuant to the circular dated 7/6/1995. It was argued that validity of that circular was challenged before the division bench of this Court at the Principal Seat and the said circular was declared illegal and ultra vires of the provisions of the Constitution in **DB SAW No.1142/2000 M/s. Ved Prakash & Co. Vs. State of Rajasthan & Ors. 2002(3) WLC 207.** It was argued that the action of the respondents in cancelling the licence of the petitioners deserves to be declared illegal and unconstitutional. The learned counsel therefore prayed that the same may be set aside.

3) On the other hand, Shri Inderjeet Singh, learned counsel for the respondents argued that the petitioners participated in the auction proceedings and their bid was highest, consequently, he was allotted masha khor shed vide allotment letter dated 8/6/1995 @ Rs.2000/- per month. The petitioners neither paid the allotment fee nor occupied the shed. It was thereafter that

initially charge-sheets were issued to the petitioners and when they did not submit any satisfactory reply, the licence of the petitioners was cancelled. The learned counsel for the respondents prayed that these petitions be dismissed.

4) Having heard learned counsel for the parties and perused the record, this Court finds that the sole reason on the basis of which the licence of the petitioners has been cancelled is the fact that the shops/sheds were allotted to them pursuant to auction proceedings and since the petitioners failed to either deposit the requisite fee/charges and occupy the same, the licence of the petitioners was cancelled. The impugned order dated 23/6/2005, has been issued on the basis of the order dated 17/10/1996 passed by the Director, Agriculture Marketing Board, Government of Rajasthan which in turn is based on the earlier circular dated 7/6/1995 issued by the same Directorate. Circular dated 7/6/1995 having been quashed and set aside pursuant to the judgment in M/s.Ved Prakash

(supra), consequential circular also no longer holds good. Even otherwise, the learned counsel for the respondents has not been able to point out any provision either from the Act or the Rules of 1970 which makes possession/ allotment of the shop in the mandai yard as a condition precedent for issuance/renewal of the licence.

5) In the circumstances, the action of the respondents in seeking to cancel the licence of the petitioners merely on account of the fact that they failed to occupy the allotted shed, is nothing but an arbitrary and colourable exercise of power.

In the result, the writ petitions succeed and are allowed in the aforesaid terms. The impugned-order dated 23/6/2005 is quashed and set aside. Consequences to follow.

(MOHAMMAD RAFIQ), J.

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